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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

EPIC GAMES, INC.

Plaintiff, Counter-defendant
v.

APPLE INC.,

Defendant, Counterclaimant

Case No. 4:20-cv-05640-YGR

**DECLARATION OF JENNIFER BROWN
IN SUPPORT OF APPLE INC.'S MOTION
FOR RELIEF FROM A NONDISPOSITIVE
PRETRIAL ORDER OF A MAGISTRATE
JUDGE**

The Honorable Yvonne Gonzalez Rogers

1
2 I, Jennifer Brown, declare as follows:

3 1. I am Director of Commercial Litigation at Apple Inc. I have been employed in this posi-
4 tion since October 2022 and have worked on Apple's in-house legal team since 2013. As a member of
5 the litigation team, I focus on potential and active lawsuits or disputes implicating Apple or Apple's
6 interests. I do not routinely attend business meetings or regularly interact with members of the business
7 about non-litigation related issues. In my role at Apple, I oversee some of Apple's most significant and
8 impactful litigations, including those related to the worldwide App Store. I am a member in good stand-
9 ing of the State Bar of California. I have personal knowledge of the facts set forth in this declaration
10 and, if called as a witness, could and would competently testify to them.
11

12 2. I understand that Epic has challenged Apple's assertion of the attorney-client privilege
13 and work product protection for certain documents Apple redacted or withheld in connection with this
14 Injunction compliance proceeding and that Judge Hixson has overruled certain of Apple's privilege as-
15 sertions in an order entered on December 2, 2024. I further understand that Apple seeks relief from
16 Judge Hixson's rulings on nine of those documents. I submit this declaration to provide further infor-
17 mation with respect to these documents. I refer to these documents by their corresponding Bates number
18 or entry number on Apple's privilege log in this matter.¹
19

20 3. **Entry No. 7077**. This document is a draft presentation deck from Analysis Group titled
21 "App Store Commission Rates and the Value of Apple and the App Store to Developers," dated June
22 2023. I was directly involved on behalf of Apple's legal department in working with Analysis Group on
23 this project. Apple's legal department was directly involved in engaging Analysis Group in connection
24 with evaluating the pricing of a commission for the U.S. Link Entitlement program. Apple's compliance
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26

27
28 ¹ Apple redacted bates-numbered documents, and fully withheld "Entry No." documents.

1 with the Court's Injunction required careful and thoughtful legal analysis in connection with setting any
2 commission. The Court had discussed Apple's overall commission rate during the merits phase of this
3 litigation, and the Court's findings related to that commission rate in its post-trial order informed Apple's
4 decision to retain Analysis Group for this analysis. This specific draft presentation deck was provided
5 for feedback to me as well as other of Apple's in-house counsel and outside counsel for the purpose of
6 seeking legal advice. We discussed our legal advice regarding this draft during calls with Analysis
7 Group, the in-house counsel team, and the outside counsel team. The first page of the document states
8 "DRAFT – Privileged & Confidential Prepared at the Request of Counsel." I reviewed and commented
9 on this version of the document, and shared it with other individuals on Apple's business, in-house legal,
10 and outside legal teams who were tasked with assembling Apple's plan to comply with the Injunction.
11 Apple's legal team reviewed various drafts of this document in connection with rendering legal advice
12 to Apple's business team regarding compliance with the Injunction. It is my understanding that this
13 version of this document reflects the feedback provided by lawyers with respect to earlier versions of
14 this presentation deck, as well as when compared with the final versions of the Analysis Group reports
15 (which have been produced to Epic).

18 4. **Entry No. 44831.** This document consists of a draft presentation deck from Analysis
19 Group titled "App Store Commission Rates and the Value of Apple and the App Store to Developers,"
20 dated July 2023. It is a later-in-time version of Entry No. 7077, which I explained above, and similar to
21 that document, it was provided to counsel for the purpose of providing legal advice directly related to
22 Apple's Injunction compliance efforts. In fact, this document was shared as an attachment to an email
23 sent by Apple's outside counsel, Gibson Dunn, to a group that included myself and other Apple in-house
24 counsel, and additional outside counsel. That email transmission was also withheld on the basis of priv-
25 ilege. The email was transmitted for the purpose of review by global counsel for ongoing litigation
26
27

1 abroad. In the email, Gibson Dunn refers to the attachments it sends with the email, including the slide
2 deck, as “work product.” It is also my understanding that this version of this document reflects the
3 feedback provided by Apple in-house and outside lawyers with respect to earlier versions of this presen-
4 tation deck, as well as when compared with the final versions of the Analysis Group reports (which have
5 been produced to Epic).

6
7 5. **APL-EG 10682431**. This document consists of a draft slide deck titled “App Store Price
8 Committee U.S. Linkout SKU,” dated July 3, 2023. It is an early draft of the Price Committee deck for
9 Project Wisconsin. Apple’s legal department instructed the team to assemble the draft Price Committee
10 deck, the final version of which was to frame for the Price Committee the legal and business aspects of
11 Apple’s compliance obligations. While Apple’s legal department requested that the business team de-
12 velop viable options regarding (for example) the commission structure, and the Price Committee made
13 the ultimate decisions regarding the U.S. Link Entitlement, this deck was prepared every step of the way
14 at the direction of (and with direct feedback from) Apple legal. The redacted portions of this document
15 reflect legal advice from counsel prepared for the purpose of communicating a legal opinion about com-
16 pliance risk. The redacted pages indicate two Apple in-house attorneys, Ling Lew and Sean Cameron,
17 helped prepare the redacted slides. There is also redacted information regarding the launch date of Ap-
18 ple’s compliance plan with the Injunction, which reflects legal advice as I describe in paragraph 12 below
19 related to document APL-EG_10682416. Later versions of this document also reflect feedback from
20 Apple’s in-house lawyers following discussion between the lawyers and business team on Injunction
21 compliance, and when compared with this version, would reveal additional privileged information. The
22 final version of the Price Committee deck was produced to Epic.

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25 6. **Entry No. 16043**. This document consists of a draft presentation deck titled “App Store
26 – Price Committee U.S. Linkout Sku,” and is dated July 3, 2023. This is a similar version of the same
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1 document I describe in paragraph 5 (APL-EG_10682431). It is an early draft of the Price Committee
2 deck for Project Wisconsin. Apple's legal department instructed the team to assemble the draft Price
3 Committee deck, the final version of which was to frame for the Price Committee the legal and business
4 aspects of Apple's compliance obligations. While Apple's legal department requested that the business
5 team develop viable options regarding (for example) the commission structure, and the Price Committee
6 made the ultimate decisions regarding the U.S. Link Entitlement, this deck was prepared every step of
7 the way at the direction of (and with direct feedback from) Apple legal.

9 7. I understand that this version of the Price Committee deck is similar to APL-
10 EG_10682431, and that Apple is only challenging the redactions that were overruled in that document.
11 I understand that the version in Entry No. 16043 was inadvertently withheld and instead should have
12 been redacted consistent with APL-EG_10892431. Accordingly, as I explained above for APL-
13 EG_10682431, the redacted portions of that document reflect legal advice from counsel prepared for the
14 purpose of communicating a legal opinion about compliance risk. The redacted pages indicate two Ap-
15 ple in-house attorneys, Ling Lew and Sean Cameron, helped prepare the redacted slides. There is also
16 redacted information regarding the launch date of Apple's compliance plan with the Injunction, which
17 reflects legal advice as I describe in paragraph 12 below related to document APL-EG_10682416. Later
18 versions of this document also reflect feedback from Apple's in-house counsel and outside counsel fol-
19 lowing discussion between the lawyers and business team on Injunction compliance, and when compared
20 with this version, would reveal additional privileged information. The final version of this document
21 was produced to Epic.
22

24 8. **APL-EG 10680322**. This document is titled "Wisconsin Draft Comms," and is dated
25 July 2, 2023. The redacted portion of this document consists of draft language for the system disclosure
26 sheet. Apple's legal department was responsible for drafting and editing the specific language that would
27

1 be included in the system disclosure sheet, not only to ensure compliance with the Injunction at issue,
2 but also because similar system disclosure sheets were the subject of an ongoing litigation in *Epic*
3 *Games, Inc. v. Google LLC*, No. 20-cv-5671 (N.D. Cal.). I was involved in tracking that parallel litiga-
4 tion and its potential impact on this litigation. I understand that later versions of the system disclosure
5 sheet also reflect the feedback provided by Apple in-house lawyers and outside counsel regarding the
6 redacted language in this document.

7
8 9. **APL-EG 10681518.** This document consists of a draft presentation deck titled “Epic
9 Injunction Compliance Press Briefing,” and is dated January 2024. Throughout Apple’s Injunction com-
10 pliance efforts, Apple’s legal department worked closely with its communications team to convey legal
11 advice regarding the enforcement and meaning of the Injunction. My legal advice, as well as legal advice
12 from other in-house counsel and outside counsel, is reflected throughout the redacted portions of this
13 document.

14
15 Five redacted pages of this document include case summary details and my notes describing my
16 interpretation of the landscape of the Injunction, legal interpretation of the Court’s rulings in this matter,
17 and legal interpretation of what would be required of Apple to comply with the Injunction. These notes
18 are communications between client and counsel, prepared to share my legal analysis and mental impres-
19 sions with the Apple team. They also reflect my own mental impressions and are attorney work product.

20
21 I understand that the text on page 15 of the document was previously redacted, but that Apple is
22 not appealing the Court’s decision on that specific redaction.

23
24 The final redacted portion of this document on page 33 consists of the draft language of the
25 system disclosure sheet. I understand that all of the images on page 33 were redacted, but that Apple is
26 only appealing the Court’s decision on the second image to the left, which depicts the system disclosure
27 sheet. As I explained in paragraph 8 regarding document APL-EG_10680322 above, the text of the

1 system disclosure sheet was drafted and revised by lawyers not only to ensure compliance with the In-
2 junction at issue, but also because similar system disclosure sheets were the subject of an ongoing liti-
3 gation in *Epic Games, Inc. v. Google LLC*, No. 20-cv-5671 (N.D. Cal.). I was involved in tracking that
4 parallel litigation and its potential impact on this litigation. I understand that later versions of the system
5 disclosure sheet also reflect the feedback provided by Apple in-house lawyers and outside counsel re-
6 garding the redacted language in this document.

7
8 10. **APL-EG 10699646**. This document reflects an email chain between Apple’s executive
9 team, communications team, and various members of the legal team discussing legal advice related to
10 compliance with foreign regulations in the Netherlands. The legal team was intimately involved in
11 providing legal advice related to public-facing communications, including to developers. Sean Cameron,
12 Apple in-house counsel and the recipient of this email, is a lawyer responsible for providing legal support
13 for the App Store and was centrally involved in the Netherlands compliance.

14
15 11. **Entry No. 2094**. This document consists of a presentation deck titled “Price Committee
16 StoreKit External Purchase Link Entitlement (US),” dated January 16, 2024. I understand that this doc-
17 ument, a final version of the Price Committee deck, was collected from a folder created by outside coun-
18 sel (and shared through in-house counsel) to prepare Phil Schiller to give testimony at the Injunction
19 compliance evidentiary hearing on May 8, 2024. This folder was created by Apple’s outside counsel,
20 who selected the documents included to prepare Mr. Schiller for testimony, and outside counsel sent this
21 folder to Apple’s in-house counsel including myself, as part of the preparation efforts. The decision to
22 include this particular document in Mr. Schiller’s testimony preparation was a strategic legal decision
23 made by in-house and outside counsel. A different version of the same document has already been
24 produced to Epic.
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12. APL-EG 10682416. This document is titled “Wisconsin Proposals 6/1.” I understand this document was prepared by Carson Oliver and reflects his personal notes from a meeting involving Apple legal, and also includes information prepared and requested by legal counsel. The document contains several redactions, but I understand that Apple is only challenging the second one, which involves the launch date of Apple’s compliance plan with the Injunction. The determination of when Apple would be required to comply with the Injunction—in view of the stay pending appeal and the post-decision filings—was informed extensively by legal counsel. I communicated closely with outside counsel regarding potential compliance dates and would provide legal advice to the business team regarding this depending on my conversations with outside counsel. Outside counsel provided legal advice on the likely date that the Injunction would become effective, based on factors such as the issuance of the Ninth Circuit’s mandate and the likelihood that the Supreme Court would grant review, and the compliance date was pegged to that date. Therefore, any date related to our required compliance was only reflected in business communications because Apple legal (or outside counsel) informed others of that date, and therefore reflects legal advice.

13. Eight of the nine documents addressed herein (all except APL-EG 10699646) were created solely in the context of Apple’s compliance with this Court’s injunction. In other words, these documents would not exist but for this litigation and the injunction. And the litigation team (both in-house and outside counsel) was involved in virtually all stages of the injunction compliance project. These documents were created to assist Apple in discharging its obligations to comply with the injunction.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 16, 2024

By: 

Jennifer Brown